Samuel J. Wellborn
Associate General Counsel

Duke Energy
1201 Main Street
Suite 1180
Columbia, SC 29201

O: 803-988-7130
F: 803-988-7123

sam.wellborn@duke-energy.com

December 3, 2021

VIA ELECTRONIC FILING
The Honorable Jocelyn G. Boyd
Chief Clerk/Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

Re: Applications of Duke Energy Progress, LLC and Duke Energy Carolinas, LLC for Approval of Smart $aver Solar as Energy Efficiency Program
Docket Numbers: 2021-143-E & 2021-144-E

DEC DEP Post-Hearing Brief

Dear Ms. Boyd:

Please find enclosed for filing in the above-referenced docket the Post-Hearing Brief of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (the "Companies"). The Companies' brief addresses the following topics:

1) Whether the cost recovery provisions of S.C. Code Ann. § 58-40-20(I) apply to the "NEM Incentive" provided for under Order No. 2015-194;

2) Whether the Program can be considered energy efficiency or demand-side management under S.C. Code Ann. § 58-37-20;

3) Whether customers will realize savings under the Program; and

4) Whether the Companies have met the applicable burden of proof.

By copy of this letter, the same is being served on the parties of record.

Kind regards,

Sam Wellborn

Enclosure

cc: Parties of record (via email)

BEFORE THE
PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NOS. 2021-143-E & 2021-144-E

In the Matters of: Application of Duke Energy Progress, LLC for Approval of Smart $aver Solar as Energy Efficiency Program Application of Duke Energy Carolinas, LLC for Approval of Smart $aver Solar as Energy Efficiency Program	**DUKE ENERGY PROGRESS, LLC'S AND DUKE ENERGY CAROLINAS, LLC'S POST-HEARING BRIEF**

Pursuant to S.C. Code Ann. Regs. 103-851, Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP", and together with DEC, the "Companies") submit this brief addressing certain limited issues to assist the Commission in its decision-making in these proceedings. Specifically, this brief addresses (1) whether the cost recovery provisions of S.C. Code Ann. § 58-40-20(I) apply to the "NEM Incentive" provided for under Order No. 2015-194; (2) whether the program proposed in these proceedings ("Program") can be considered an energy efficiency ("EE") or demand-side management ("DSM") program under S.C. Code Ann. § 58-37-20; (3) whether customers will see savings under the Program; and (4) whether the Companies have met the applicable burden of proof.

Table of Contents

I. The cost recovery provisions of S.C. Code Ann. § 58-40-20(I) apply to the "NEM Incentive" provided for under Order No. 2015-194 and do not apply to EE/DSM cost recovery.

The cost recovery provisions of S.C. Code Ann. § 58-40-20(I) apply exclusively to net energy metering ("NEM") programs—including the corresponding NEM Incentive—in South Carolina and have no impact on the Companies' EE/DSM Program proposed in these proceedings. The purposes of the recovery mechanisms under S.C. Code Ann. § 58-40-20 of Act No. 62 of 2019 ("Act 62") and S.C. Code Ann. § 58-37-20 are completely different and serve distinct public policy goals. In the case of NEM, the public policy goal of S.C. Code Ann. § 58-40-20(I) of Act 62 was to provide continued cost recovery at a higher price for the value of energy generated under NEM programs ("Existing NEM Programs") arising from Act No. 236 of 2014 ("Act 236"), which were established to incent adoption of solar. However, S.C. Code Ann. § 58-40-20(I) also makes clear that those same heightened costs would not be recoverable under the new Solar Choice NEM Programs arising from Act 62 given that the public policy focus of these new NEM programs was to eliminate cost-shift "to the greatest extent practicable." S.C. Code Ann. § 58-40-20(A)(2). In contrast, S.C. Code Ann. § 58-37-20 provides recovery sufficient to ensure no reduction to the utility's net income under EE/DSM programs, which serves the public policy goal of making a utility whole for investing in energy supply and end-use technologies that are cost-effective, environmentally acceptable, and reduce energy consumption or demand. In other words, the utility is allowed to recover net lost revenues ("NLR") resulting from the reduction in energy consumed from the grid so that it is in the same position it would have been had it instead invested in new generating facilities.

A. Commission Order No. 2015-194 established NEM programs under Act 236 and outlined the cost recovery permitted thereunder.

Act 236 was signed into law by the Governor on June 2, 2014. Among other things, Act 236 required the Commission to "initiate a generic proceeding for purposes of implementing the requirements of this chapter with respect to the net energy metering rates, tariffs, charges, and credits of electrical utilities." S.C. Code Ann. § 58-40-20(F)(4). In fulfillment of that directive, the Clerk's Office established Docket No. 2014-246-E on June 17, 2014. Notice of Filing in Generic Proceeding Pursuant to the Distributed Energy Resource Program Act, Act No. 236 of 2014, filed in Docket No. 2014-246-E on June 17, 2017. On December 11, 2014, the South Carolina Office of Regulatory Staff (the "ORS") filed with the Commission a settlement agreement (the "Settlement Agreement") on behalf of the ORS, the Companies, South Carolina Electric & Gas Company, Central Electric Power Cooperatives, Inc. and the Electric Cooperatives of South Carolina, the South Carolina Coastal Conservation League, the Southern Alliance for Clean Energy, the South Carolina Solar Business Alliance, LLC, Sustainable Energy Solutions, LLC, Solbridge Energy LLC, the Alliance for Solar Choice, and the Sierra Club (collectively, the "Settling Parties"). The Settlement Agreement outlined the agreed-upon parameters for NEM programs under Act 236, and was approved by the Commission on March 20, 2015, in Order No. 2015-194.

Pursuant to the Settlement Agreement, the Settling Parties agreed that each kilowatt hour ("kWh") of energy generated and consumed by an NEM customer-generator would be at least as valuable, for ratemaking purposes, as a kWh of power supplied to that customer from the utility grid. Order No. 2015-194, Ex. 1, Section II (3). This valuation is known as the 1:1 rate. *Id.* The Settling Parties also agreed upon a methodology (the "Methodology") to value the energy generated by the customer-generator that was exported to the utility's system. *Id.* at 8. Consistent with Act 236's intended design to incent the development of distributed energy resources ("DER") and achieve the agreed-upon 1:1 rate, the Settling Parties also agreed to allow utilities to recover

incentive costs from customers as a component of their respective DER programs, subject to the limitations of South Carolina law (the "NEM Incentive"). *Id.* at 19-20. The NEM Incentive is a DER program cost and represents the remaining positive value, if any, after the value of generation under the Methodology is subtracted from the 1:1 Rate. *Id.* Order No. 2015-194 designates this remaining positive value as "lost revenue" for which the utilities are permitted to recover as the NEM Incentive. *Id.* at 21, 26.

B. S.C. Code Ann. § 58-40-20(I) relates exclusively to NEM programs and the prohibition on recovering the NEM Incentive under Solar Choice programs.

Act 62 was signed into law by the Governor on May 16, 2019, as the expiration date for Existing NEM Programs approached. Act 62 required the establishment of new NEM programs, called the "Solar Choice" programs, with a required implementation date of June 1, 2021. S.C. Code Ann. § 58-40-20(F)(1). However, Act 62 also extended the NEM terms and conditions for Existing NEM Programs provided in Commission Order No. 2015-194 to all customer-generators who applied for NEM before June 1, 2021. S.C. Code Ann. § 58-40-20(B). Further delineating between the Existing NEM Programs and the new Solar Choice programs, S.C. Code Ann. § 58-40-20(I) of Act 62 provided:

> Nothing in this section, however, prohibits an electrical utility from continuing to recover **distributed energy resource program costs in the manner and amount approved by Commission Order No. 2015-194** for customer-generators applying before June 1, 2021. Such recovery shall remain in place until full cost recovery is realized. Electrical utilities are prohibited from recovering lost revenues associated with customer-generators who apply for customer-generator programs on or after June 1, 2021.

Id. § 58-40-20(I). (emphasis added). Importantly, Act 62 expressly references Order No. 2015-194. This plain language of Act 62 makes clear that utilities can continue to recover DER program costs—including the NEM Incentive—for customers under the Existing NEM programs. However, the lost revenues representing the NEM Incentive are unrecoverable going forward for

customers applying on or after June 1, 2021 (i.e., Solar Choice customers). As described above, the term lost revenue originated in Order No. 2015-194, which defines lost revenue as the difference between the value of solar and the bill savings that NEM customers enjoy. Order No. 2015-194 at 19-20. Thus, lost revenues were created and approved exclusively as a part of the "manner and amount" of cost recovery approved by Order No. 2015-194 referred to in S.C. Code Ann. § 58-40-20(I). In short, the plain language of Act 62: (1) ensures that utilities could recover costs, including lost revenues, from customer-generators applying for NEM programs before June 1, 2021 in a manner consistent with the revenue recovery they were receiving from existing NEM customers; and (2) clarifies that utilities were no longer eligible to receive such cost recovery after June 1, 2021.

C. S.C. Code Ann. § 58-37-20 and the EE/DSM Mechanism govern EE/DSM programs in South Carolina.

S.C. Code Ann. § 58-37-20 and the EE/DSM Mechanism contain the complete requirements for EE/DSM programs in South Carolina.[1] As for S.C. Code Ann. § 58-37-20, it permits the Commission to "adopt procedures that encourage electrical utilities and public utilities providing gas services subject to the jurisdiction of the Commission to invest in cost-effective energy efficient technologies and energy conservation programs." This section also provides the specific public policy goals which the procedures must achieve, including providing "incentives and cost recovery for energy suppliers and distributors who invest in energy supply and end-use technologies that are cost-effective, environmentally acceptable, and reduce energy consumption or demand." S.C. Code Ann. § 58-37-20. This section further provides that "renewable energy technologies" are included in the definition of allowable demand-side activities. S.C. Code Ann. § 58-37-10(1); S.C. Code Ann. § 58-37-20. S.C. Code Ann. § 58-37-20 makes clear that if a utility

[1] The Commission approved the EE/DSM Mechanism in Order Nos. 2021-32 and 2021-33.

implements such a program in accordance with the procedures authorized by this section, that the utility will be able to "recover costs and obtain a reasonable return on their investment . . . sufficient to make these programs at least as financially attractive as construction of new generating facilities." *Id.* Therefore, any such utility is able to recover costs such that its "net income . . . is at least as high as the net income would have been if the energy conservation measures had not been implemented." *Id.*

To achieve the specific goals for EE/DSM programs in South Carolina, the Commission established the procedures referenced under S.C. Code Ann. § 58-37-20 via the EE/DSM Mechanism. The EE/DSM Mechanism governs the Companies' implementation of, and cost recovery associated with, EE/DSM programs in South Carolina. To ensure that a utility's net income is "at least as high as the net income would have been" if the utility had chosen not to implement any EE/DSM program, the EE/DSM Mechanism permits utilities to recover NLR. The EE/DSM Mechanism defines NLR as:

> [R]evenue losses due to new DSM or EE Measures, net of fuel costs and non-fuel variable operating and maintenance expenses avoided at the time of the kilowatt-hour sale(s) lost due to the DSM or EE Measures, or in the case of purchased power, in the applicable billing period incurred by [the Companies], public utility operations as the result of a new DSM or EE Measure.

Order No. 2021-32, Ex. 1, App. A., Order No. 2021-33, Ex. 1, App. A. To qualify for this cost recovery, the EE/DSM Mechanism requires approved programs to achieve both qualitative and quantitative requirements. Qualitatively, the EE/DSM Mechanism requires approved EE/DSM programs to be: (1) commercially available and sufficiently mature; (2) applicable to the Companies' area demographics and climate; and (3) feasible for an EE/DSM program. Quantitatively, the EE/DSM Mechanism requires approved EE/DSM programs to pass the primary cost-effectiveness screen in South Carolina—the Utility Cost Test ("UCT").

D. S.C. Code Ann. § 58-40-20(I) does not modify the permitted cost recovery applicable to EE/DSM programs under S.C. Code Ann. § 58-37-20 and the EE/DSM Mechanism.

As described above, the Companies proposed the Program under S.C. Code Ann. § 58-37-20 and the EE/DSM Mechanism, which provide for the recovery of NLR for programs approved thereunder. These NLR are completely distinct from the under-recovered or "lost" revenues associated with the 1:1 rate for certain NEM customers and aim to achieve different public policy goals. These recovery mechanisms not only relate to different policy goals, but also to different types of revenue. For example, NEM lost revenues are calculated using the total generator output, whereas energy efficiency NLR relates solely to a reduction in behind-the-meter consumption. Additionally, energy efficiency NLR is adjusted for net found revenues, while there is no such adjustment with NEM lost revenues. Another clear distinction is that NLR is reduced for savings attributable to free-riders (i.e., customers that would have adopted solar absent the EE program incentive), while NEM lost revenues do not factor in any adjustment for free-ridership. Finally, NEM lost revenues are recoverable from customers as long as the NEM customer receives the 1:1 rate, while EE NLR is only recoverable for 36 months or for the life of the measure, whichever is less.[2] Therefore, S.C. Code Ann. § 58-40-20(I) relates to the separate and distinct policy goals of NEM and did not modify or abridge the Companies' right to recover NLR associated with approved EE/DSM programs under S.C. Code Ann. § 58-37-20.

E. Basic tenets of statutory interpretation reveal that the "lost revenues" referred to in S.C. Code Ann. § 58-40-20(I) are not the same as the "net income" referred to in S.C. Code Ann. § 58-37-20.

Basic tenets of statutory interpretation reveal that the "lost revenues" referred to in S.C. Code Ann. § 58-40-20(I) are not the same as the "net income" referred to in S.C. Code Ann. § 58-

[2] These matters are discussed in detail in Leigh Ford's rebuttal testimony presented in these proceedings.

37-20. The caselaw of this state "presume[s] that the Legislature is familiar with prior legislation [i.e., the EE/DSM statute], and that if it intends to repeal existing laws it would . . . expressly do so; hence, if by any fair or liberal construction two acts may be made to harmonize, no court is justified in deciding that the later repealed the first." *Hodges v. Rainey*, 341 S.C. 79, 88–89, 533 S.E.2d 578, 583 (2000). In passing the more recent Act 62, the General Assembly would have been aware of the explicit requirement that utilities are permitted to recover net income associated with programs arising under S.C. Code Ann. § 58-37-20, and would not have repealed that requirement by implication. Because the Program in this case is an EE/DSM program and not a Solar Choice program, the statutes must be construed to permit the recovery of net income consistent with S.C. Code Ann. § 58-37-20.

Act 62 does not modify existing cost recovery under EE programs, and applying S.C. Code Ann. § 58-40-20(I) to EE/DSM programs violates a fundamental principle of statutory interpretation—*pari materia*. Specifically, *pari materia* is a principle of statutory construction that reflects a "practical experience in the interpretation of statutes: a legislative body generally uses a particular word with a consistent meaning in a given context." *Erlenbaugh v. United States*, 409 U.S. 239, 243 (1972). The Program arises under S.C. Code Ann. § 58-37-20, which does not make reference to "lost revenues," but instead authorizes the recovery of "net income." As such, the Companies currently recover "net" lost revenue under EE programs (i.e., "net income" as contemplated by S.C. Code Ann. § 58-37-20). The principle of *pari materia*, as applied to these statutes, suggests that if the General Assembly had intended to prohibit the Companies from recovering net lost revenue under EE programs going forward by operation of S.C. Code Ann. § 58-40-20(I), it would have used the same term used in S.C. Code Ann. § 58-37-20—the statute that currently authorizes recovery of net lost revenues under EE programs.

II. The Program is an EE/DSM program under S.C. Code Ann. § 58-37-20.

The Program proposed in these proceedings is an EE/DSM program under S.C. Code Ann. § 58-37-20 under the plain terms and underlying intent of the statute. Notably, the Program fulfills the legislative intent of the EE/DSM statute by reducing customer demand and it is consistent with previous, similar, ORS-supported and Commission-approved EE/DSM programs.

It is clear that the EE/DSM statute *does* and *was intended to* encompass the Program as presented. The purpose of the EE/DSM statute is to reduce demand on the utility system using a variety of demand-side (i.e., behind-the-meter) measures and programs. That is exactly what this Program does. In fact, the Program was carefully designed to maximize the amount of demand-side reductions using a strategic combination of requirements and features, all while not reducing the function of the participating household, as described in more detail below.

The Commission—as the quasi-judicial body responsible for implementing Title 58 of the S.C. Code of Laws—must give effect to the intent of the legislature. To aid in executing this responsibility, the S.C. Supreme Court has provided guidance:

> A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose.

Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 713 S.E.2d 278 (S.C. 2011).

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. All rules of statutory construction are subservient to the one that the legislative intent must prevail if it reasonably can be discovered in the language used, and the language must be construed in the light of the intended purpose of the statute. Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers.

Corbin v. Carlin, 620 S.E.2d 745, 366 S.C. 187 (S.C. 2005).

This precedent leads to the question: What is the purpose, design, and policy of the EE/DSM statute? Principally, the EE/DSM statute is intended to reduce customer reliance on

utility-generated power, and to incentivize utilities to pursue programs that achieve that purpose. In other words, the EE/DSM statute motivates utilities to take actions to reduce customer demand that, absent the statute, would be counter to utilities' interest.

The EE/DSM statute was created by the Energy Conservation and Efficiency Act of 1992, the preamble of which indicates an intent to reduce utility consumption of out-of-state coal, oil, and natural gas as a portion of South Carolina customer energy expenditures. Energy Conservation and Efficiency Act of 1992, Bill 1273 (1992), *available at* https://www.scstatehouse.gov/sess109_1991-1992/bills/1273.htm ("Whereas, energy expenditures represent a substantial monetary outflow from South Carolina's economy in that South Carolina produces no coal, oil, or natural gas; and Whereas, increasingly high usage of imported oil results in economic vulnerability . . . ."). The EE/DSM statute itself—in fulfilling that intent—requires the provision of cost recovery and incentives for measures that are "cost-effective, environmentally acceptable, and reduce energy consumption or demand." In short, cost-effectively reducing demand on the utility system is the thrust of the EE/DSM statute.[3]

There is no debate that S.C. Code Ann. § 58-37-20 establishes the requirements for utility EE/DSM programs regulated by the Commission. To be clear, demand-side activities are not limited to actively controlling demand, but rather about behind-the-meter (i.e., demand-side) programs that reduce demand, whether at specific times or on a more constant basis. ORS witness Brian Horii made essentially the same statement in his direct testimony filed in Docket No. 2019-182-E: "Solar systems or any demand side management ('DSM') options reduce customer bills through reductions in the amount of electricity the customer needs to purchase from a utility."

[3] Witness Moore noted that a primary purpose of EE/DSM programs is to drive "systemwide efficiencies." Tr. Vol. 1, p. 200, ll. 24-25. Witness Moore explained that this is the case even in the context of EE/DSM programs that focus on end-use efficiencies given that they aim to "cost-effectively leverage efficiencies further up the system." Tr. Vol. 1, p. 200, ll. 20-21.

Hearing Exhibit No. 9. That is precisely what the Program proposed in this case accomplishes; the rooftop solar incentive component of the Program will result in measurable, additional behind-the-meter reductions in customer demand.

The additional rooftop solar capacity resulting from this Program will produce demand reductions on the grid through additional behind-the-meter self-consumption. It is undisputed that self-consumption of behind-the-meter generation reduces demand on the Companies' systems, and that these demand reductions impact the utility system in an equivalent way to the installation of other EE/DSM measures. It is also true, and was acknowledged by the ORS,[4] that rooftop solar is an "energy supply" technology, a type of measure for which the EE/DSM statute explicitly **requires** cost recovery. S.C. Code Ann. § 58-37-20 (The EE/DSM Mechanism "must: provide incentives and cost recovery for energy suppliers and distributors who invest in **energy supply** and end-use technologies . . . .") (emphasis added). Moreover, it is undisputed that solar PV is a "renewable energy technolog[y]," which is explicitly included in the definition of allowable demand-side activities. S.C. Code Ann. § 58-37-10(1); S.C. Code Ann. § 58-37-20. The Program—designed in accordance with South Carolina law—consists of a package of requirements and features that work together to cost-effectively reduce customer demand; these requirements and features include the following:

- Customers must own an individually metered residence and install a solar PV system;
- Customers must participate in the Companies' Winter Bring Your Own Thermostat demand response program;
- Participants must be all-electric customers; and

[4] Tr. Vol. 2, p. 247, l. 3.

- Participating customers are subject to EE/DSM evaluation, measurement, and verification ("EM&V"), pursuant to the EE/DSM Mechanisms, to validate savings (which will inform the Companies' cost recovery).

These features are vital elements of the proposed Program, and they work together to reduce customer demand, which results in avoided electricity production, capacity, and transmission and distribution costs. This strategic, synergistic bundling is expressly permitted by the EE/DSM Mechanism. Order No. 2021-32, Order Exhibit No. 1 at 32, Docket No. 2013-98-E (Jan. 15, 2021); Order No. 2021-33, Order Exhibit No. 1 at 35, Docket No. 2015-163-E (Jan. 15, 2021).

The focus of demand-side programs on reducing demand at the meter is further supported by the UCT cost-effectiveness test, which evaluates EE/DSM programs based on a comparison between (1) the utility's avoided electricity production, capacity, and transmission and distribution costs, and (2) the costs of the program. This analysis is exclusively focused on reductions in grid energy usage, and this is precisely what the Program proposed in these proceedings would achieve. Other programs that similarly achieve savings at the meter by leveraging behind-the-meter generation are both the PowerShare program, approved by the Commission in 2009, and the Combined Heat and Power ("CHP") program, approved by the Commission in 2018. PowerShare is designed such that customers self-consume energy from on-site backup generation, while, being subject to load curtailment requirements. That arrangement is closely analogous to the Programs proposed in these proceedings. *See* Order No. 2009-336, Docket No. 2009-166-E (May 19, 2009) (approving, among others, DEC's PowerShare program); Order No. 2009-374, Docket No. 2009-190-E (June 26, 2009) (approving, among others, DEP's CIG Demand Response program under the Demand Response Automation tariff). Likewise, the CHP program reclaims heat from the customer-owned Topping Cycle CHP unit, which is often a combustion turbine. Duff Rebuttal

Test. at p. 7, ll. 17-18. These programs—some of which have been in place for over a decade—are analogous to the Program proposed in these proceedings because they similarly produce demand reductions that reduce customer demand on the grid.

The Program proposed in these proceedings fits squarely under the EE/DSM statute, is consistent with previous analogous EE/DSM offerings, and will cost-effectively reduce customer demand on the utility system using a variety of demand-side (i.e., behind-the-meter) measures and programs.

III. Customers will realize savings under the Program, and the protections afforded by the EE/DSM Mechanism provide customers and the Commission with substantial assurance of those savings.

Customers will realize savings under the Program, and the protections afforded by the EE/DSM Mechanism provide customers and the Commission with substantial assurance of those savings. To be clear, the Companies cannot—with perfect precision—predict the amount of savings customers will enjoy from a proposed EE/DSM program. However, the EE/DSM Mechanism agreed to by ORS and approved by the Commission provides that a UCT cost-effectiveness score of 1.0 or greater is sufficient to support the Companies proposing a new EE/DSM program. In this case, accounting for the inclusion of the Winter BYOT program—for which participation is required—the UCT cost-effectiveness score is 2.75 for DEC and DEP. Tr. Vol. 3, p. 576.14, l. 10. That means that for every dollar customers pay into the EE/DSM rider, customers are projected to see a return of $2.75. As explained in Mr. Duff's direct testimony:

> The Companies estimate that these total avoided costs are approximately $26.5 million for DEC and $3.9 million for DEP. In comparison, the estimated costs of the Program are $10.5 million for DEC and $2.0 million for DEP. Based on this UCT evaluation, it would cost the Companies' customers more if the Program was not implemented.

Tr. Vol. 1, p. 57.8, ll. 23-27. In other words, the Companies' customers should expect to realize $17.9 million in savings on a net present value basis. Although the Companies utilized accepted

principles to calculate forecasted savings, the Commission-approved EE/DSM Mechanism establishes and requires the EM&V process, which occurs after EE/DSM programs are implemented and validates the savings resulting from EE/DSM programs. Indeed, the EE/DSM Mechanism, which binds the Companies' execution of the Program, provides as follows: "DEC [and DEP] will conduct the EM&V of Programs using a nationally-recognized protocol to ensure that Programs remain cost-effective. EM&V of Programs will be conducted by an independent third-party." Order No. 2021-32, Order Exhibit No. 1 at 35-36, Docket No. 2013-298-E (Jan. 15, 2021); Order No. 2021-33, Order Exhibit No. 1 at 39, Docket No. 2015-163-E (Jan. 15, 2021).

Only after the Commission approves the EE/DSM rider may the Companies begin recovering the associated costs. *See id*. This means that any recoverable EE/DSM costs incurred by the Companies in year 2022 will not be filed as part of a modified EE/DSM rider until 2023. Tr. Vol. 4, p. 635, ll. 11-24. Upon Commission approval of that rider, those costs will be recovered from customers beginning in 2024—two years after the year in which they were incurred. *See id*. This process not only ensures that the costs recovered from customers arise from verified and validated shared savings, but it also contains a correction mechanism for over-collected revenue. Tr. Vol. 3, p. 611, ll. 6-10. That is, if the Companies collect more revenue than they were entitled to under the EE/DSM Mechanism, they are required to pay that over-collected revenue back to customers, with interest. *See id*. The savings would realize in customers' base rates, including Program participants and non-participants. Tr. Vol. 4, p. 636, ll. 1-4; Tr. Vol. 3, p. 576.4, ll. 16-20.

In conclusion, the Companies provide their very best estimate of program cost-effectiveness and customer savings when a program is proposed, as they did in this case. Those estimates are then validated and verified by an independent third party using a "nationally recognized protocol." The EE/DSM rider is then adjusted to reflect the results of EM&V and base

rates are updated in the next general rate case to realize the resulting savings. Each of these steps in the process provide assurance to and protection of customers when new EE/DSM programs are proposed.

IV. The Companies have met their burden of proof by demonstrating, by a preponderance of the evidence, that the Program should be approved.

The Companies face a relatively low burden of proof in these proceedings, which the Companies have amply met. As discussed above and throughout the proceeding, the Commission's evaluation of the evidence must be conducted according to and under the EE/DSM Mechanism approved for the Companies, as well as under the provisions of S.C. Code Ann. § 58-37-20. The burden of proof for determining whether the Companies have shown that the Program should be approved is the preponderance of the evidence standard. S.C. Code Ann. § 1-23-600(A)(5) ("Unless otherwise provided by statute, the standard of proof in a contested case is by a preponderance of the evidence."). In other words, the Commission should grant the Companies' applications if the Companies have demonstrated, by a preponderance of the evidence, that the Program should be approved as being consistent with the EE/DSM Mechanism and S.C. Code Ann. § 58-37-20.

The preponderance of the evidence is simply evidence that convinces the fact finder as to its truth. *Pascoe v. Wilson*, 416 S.C. 628, 640, 788 S.E.2d 686, 693 (2016). This is a low burden of proof which provides that the party with the burden of proof prevails if the fact finder concludes that the evidence presented tips the scales—even slightly—in favor of the party with the burden of proof. Stated differently, "the burden of showing something by a preponderance of the evidence . . . simply require[s] the trier of fact to believe that the existence of a fact is more probable than its nonexistence." *U.S. v. Manigan*, 592 F.3d 621, 831 (4th Cir. 2010).

The Companies proffered ample evidence in these proceedings demonstrating that the Program satisfies the EE/DSM statute and the applicable requirements of the EE/DSM Mechanism, including explanatory expert testimony and data-driven analyses supporting the various components of the Program and demonstrating that the Program is in customers' best interest. The Companies have very clearly satisfied their burden of proof.

CONCLUSION

The Companies respectfully submit that the cost recovery provisions of S.C. Code Ann. § 58-40-20(I) do not apply in this case; the Program proposed in these proceedings is an EE/DSM program under S.C. Code Ann. § 58-37-20; customers will realize savings under the Program, and assurance of such is provided in the process set forth in and required by the EE/DSM Mechanism; and the Companies have more than met the applicable burden of proof. For these reasons, the Companies submit that the Program should be approved.

Respectfully submitted this 3rd day of December 2021.

s/Samuel J. Wellborn
Samuel J. Wellborn, Associate General Counsel
Duke Energy Progress, LLC and Duke Energy Carolinas, LLC
1201 Main Street, Suite 1180
Columbia, SC 29201
sam.wellborn@duke-energy.com

J. Ashley Cooper, Esquire
Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301
Charleston, South Carolina 29401
ashleycooper@parkerpoe.com

Marion ("Will") William Middleton, III
Parker Poe Adams and Bernstein LLP
110 East Court Street. Suite 200
Greenville, SC 29601
willmiddleton@parkerpoe.com

Attorneys for Duke Energy Progress, LLC and Duke Energy Carolinas, LLC

BEFORE THE
PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NOS. 2021-143-E & 2021-144-E

In the Matters of:	
Application of Duke Energy Progress, LLC for Approval of Smart $aver Solar as Energy Efficiency Program	**CERTIFICATE OF SERVICE**
Application of Duke Energy Carolinas, LLC for Approval of Smart $aver Solar as Energy Efficiency Program	

The undersigned, Lyndsay McNeely, Paralegal for Duke Energy Carolinas, LLC and Duke Energy Progress, LLC, does hereby certify that she has served the persons listed below with a copy of Duke Energy Progress, LLC's and Duke Energy Carolinas, LLC's Post-Hearing Brief via electronic mail at the addresses listed below on December 3, 2021.

Alexander W. Knowles
Office of Regulatory Staff
aknowles@ors.sc.gov

Andrew M. Bateman
Office of Regulatory Staff
abateman@ors.sc.gov

Benjamin P. Mustian
Office of Regulatory Staff
bmustian@ors.sc.gov

Heather Shirley Smith
Duke Energy Carolinas, LLC & Duke Energy Progress, LLC
heather.smith@duke-energy.com

Samuel J. Wellborn
Duke Energy Carolinas, LLC & Duke Energy Progress, LLC
sam.wellborn@duke-energy.com

J. Ashley Cooper
Parker Poe Adams & Bernstein, LLP
ashleycooper@parkerpoe.com

Marion William Middleton III
Parker Poe Adams & Bernstein, LLP
willmiddleton@parkerpoe.com

Jeffrey W. Kuykendall
Attorney at Law
jwkuykendall@jwklegal.com

Emma Clancy
Southern Environmental Law Center
eclancy@selcsc.org

Kate Lee Mixson
Southern Environmental Law Center
klee@selcsc.org

Charles L.A. Terreni
Terreni Law Firm, LLC
charles.terreni@terrenilaw.com

Dated this 3rd day of December, 2021.

Lyndsay McNeely